

It is the position of the respondent and insurance carrier that average weekly wage is an issue which can only be dealt with at the time of regular hearing, following which a final determination on the issue could be made. The Appeals Board agrees. The statutory authority under which preliminary hearings are conducted is K.S.A. 44-534a(1) which provides, inter alia:

"After an application for a hearing has been filed pursuant to K.S.A. 44-534 and amendments thereto, the employee or the employer may make application for a preliminary hearing, in such form as the director may require, on the issues of the furnishing of medical treatment and the payment of temporary total disability compensation."

Here there is no issue regarding medical treatment, since the injured worker is deceased and, contrary to the claimant's Application for Preliminary Hearing, there is no issue as to temporary total disability compensation. The issue involved herein is with regard to permanent benefits under K.S.A. 44-510b. Under these circumstances, the Administrative Law Judge has no authority to make a determination of the decedent's average weekly wage prior to a full regular hearing. Therefore, the Preliminary Hearing Order of the Administrative Law Judge finding the amount of claimant's average weekly wage at the time of his death is null and void.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the February 14, 1995, Order of Administrative Law Judge John D. Clark should be, and the same is hereby, reversed, set aside and held for naught.

IT IS SO ORDERED.

Dated this ____ day of April 1995.

BOARD MEMBER _____

BOARD MEMBER _____

BOARD MEMBER _____

c: Joseph Seiwert, Wichita, KS
W. Walter Craig, Wichita, KS
Kendall R. Cunningham, Wichita, KS
John D. Clark, Administrative Law Judge
George Gomez, Director